

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF AUBURN,)	DOCKET TR-120828
)	
Petitioner,)	
)	ORDER 01
v.)	
)	
GATES, GATES, GATES LLC;)	PREHEARING CONFERENCE
MOHAWK NORTHERN PLASTICS,)	ORDER
LLC d/b/a AMPAC; AND BNSF)	(Evidentiary Hearing Set for
RAILWAY COMPANY,)	February 12, 2013, at 9:30 a.m.)
)	
Respondents.)	
)	
.....)	

- 1 **NATURE OF PROCEEDING.** This proceeding arises out of a petition from the City of Auburn (City or Petitioner) to construct a highway-rail grade crossing at A Street Northwest in the City of Auburn. The grade crossing will impact the railway operator Burlington Northern Santa Fe (BNSF) and two private companies, Gates, Gates, Gates LLC and Mohawk Northern Plastics, LLC d/b/a AMPAC (collectively Respondents) who currently make use of a private rail spur line at that location.

- 2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington, on August 22, 2012, before Administrative Law Judge Adam E. Torem.

- 3 **APPEARANCES.** Steven L. Gross, Assistant City Attorney, Auburn, WA, represents petitioner City of Auburn. William A. Gates, Owner, Kent, WA, represents respondent Gates, Gates, Gates LLC. Richard Shaw, General Manager, Auburn, WA, represents respondent AMPAC. Tom Montgomery and Kelsey Endres, Seattle, WA, represent respondent BNSF. Michael Fassio, Assistant Attorney General, Olympia, WA, represents the Commission’s regulatory staff (Commission Staff or Staff).¹ Contact information for the parties’ representatives is attached as Appendix A to this order.

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 4 **INTERVENTION.** No person or entity petitioned to intervene in this proceeding.
- 5 **DISCOVERY.** Staff requested that the Commission make discovery available under Washington Administrative Code (WAC) 480-07-400 – 425, and no party objected to that request. Pursuant to WAC 480-07-400(2)(b)(iv), the Commission finds that the needs of the case may require discovery and makes the discovery rules available to all parties.
- 6 **SEPA REVIEW.** The City of Auburn represented at the prehearing conference that it has already concluded the State Environmental Policy Act (SEPA) review for the proposed crossing and will provide the Commission with relevant documentation of the results of that environmental review.
- 7 **PROCEDURAL SCHEDULE.** The parties agreed on, and the Commission adopts, the following procedural schedule:

Tuesday, September 25, 2012 – Settlement Conference (parties only)
Friday, October 5, 2012 – Petitioner files direct testimony
Friday, December 14, 2012 – Respondents and Staff file response testimony
Monday, January 14 2013 – All parties file rebuttal/cross-answer testimony
Tuesday, February 12 2013 – Evidentiary Hearing (beginning at 9:30 a.m.)
Tuesday, February 12, 2013 – Public Hearing (beginning at 6:00 p.m.)

The procedural schedule is included in this Order as Appendix B.

- 8 **PUBLIC COMMENT HEARING.** As noted above, the Commission will conduct a public comment hearing on **February 12, 2013, at approximately 6:00 p.m.** to afford members of the public an opportunity to present oral comments on the issues presented by this case. A separate notice will be issued setting forth the specific location in the City of Auburn where the public comment hearing will be held and confirming the date and time.
- 9 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter commencing on **February 12, 2013, at 9:30 a.m.**, at a location to be designated in the City of Auburn. A separate notice will be issued setting forth the specific location of the evidentiary hearing and confirming the date and time.
- 10 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an **original plus 7 copies** of all pleadings, motions, briefs, and other prefiled

materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

- 11 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 12 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to <records@utc.wa.gov >. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 13 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the filing process, but must file an original, plus 7 paper copies, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. WAC 480-07-145(6). Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judge as well as to the parties to the proceeding.
- 14 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Petitioner and Respondents requested mediation of the disputed issues raised in the petition, and Staff supports that request. Accordingly, pursuant to WAC 480-07-710(3), the Commission will appoint an Administrative Law Judge to serve as a mediator in this proceeding. A separate notice will be issued setting and identifying the mediator who will, in turn, coordinate directly with the parties to confirm the date and time of any mediation sessions and establish the process and procedures of the mediation pursuant to WAC 480-07-710(4).

15 **NOTICE TO PARTIES:** A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington, and effective August 23, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

APPENDIX A

PARTIES' REPRESENTATIVES
DOCKET TR-120828

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
City of Auburn	Steven L. Gross Assistant City Attorney City of Auburn 25 West Main Street Auburn, WA 98001	253-804-5027		sgross@auburnwa.gov
Gates, Gates, Gates LLC	William A. Gates 24708 142 nd Avenue SE Kent, WA 98042	253-631-7771		williamgates4@me.com
Mohawk Northern Plastics, LLC d/b/a AMPAC	Richard Shaw General Manager 701 A Street NE Auburn, WA 98002	253-939-8206		rshaw@ampaconline.com
BNSF Railway	Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Avenue, Suite 2700 Seattle, WA 98101	206-625-1801		tom@montgomeryscarp.com kelsey@montgomeryscarp.com
Commission Staff	Michael Fassio Assistant Attorney General 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504-0128	360-664-1192	360-586-5522	mfassio@utc.wa.gov

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TR-120828**

<u>EVENT</u>	<u>DATE</u>
Settlement Conference	Tuesday, September 25, 2012
Petitioner - Direct Testimony	Friday, October 5, 2012
Respondents and Staff - Response Testimony	Friday, December 14, 2012
All Parties – Rebuttal/Cross Answer Testimony	Monday, January 14, 2013
Evidentiary Hearing	Tuesday, February 12, 2013
Public Hearing	Tuesday, February 12, 2013 (evening)